



## CITY ATTORNEY'S OFFICE

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### CITY COUNCIL STAFF REPORT

Meeting: September 3, 2025

#### Subject:

First Amendment to Affordable Housing Covenant and Restriction on Sale Price ("**First Amendment**") and Substitution of Trustee and Full Reconveyance with Trustor Consent ("**Reconveyance**") with respect to the Nineteen800 project at 19800 Vallco Parkway ("**Project**").

#### Recommended Action:

1. Approve both the First Amendment and Reconveyance provided herewith and authorize the City Manager to execute the documents and deliver them for recordation.
2. Authorize the City Attorney to make minor modifications to the First Amendment and Reconveyance as deemed necessary to effectuate the intent of the parties.

#### Background:

The City approved the development of 204 residential units for the Project and required that 31 units ("**AH Units**") be restricted for sale to moderate income households pursuant to that certain Affordable Housing Covenant and Restriction on Sale Price dated March 17, 2015 and recorded on April 10, 2015 as Instrument No. 22913410 in the Official Records of Santa Clara County ("**Covenant Agreement**"). The Covenant Agreement was secured by that certain Performance Deed of Trust dated March 17, 2015 and recorded on April 10, 2015 as Instrument No. 22913411 in the Official Records of Santa Clara County ("**Deed of Trust**").

Developer paid an in lieu fee to allow Developer to rent the restricted units while Developer retained ownership of the AH Units.

Developer previously obtained a loan of \$80M to which the City subordinated the Deed of Trust. Developer is refinancing that loan and has requested that the City again subordinate the Deed of Trust to the new loan.

City is not legally required to subordinate the Covenant Agreement nor the Deed of Trust to the proposed refinancing.

#### Reason for Recommendation and Available Options

1. If the Developer was to default under the Covenant Agreement, the City would be required under California law to start foreclosure under the Deed of Trust. As there is no liquidated amount specified in the documents, the City would be required to use judicial foreclosure so the Court could determine the amount secured, which would be the amount that the Developer could pay to secure the release of the Deed of Trust. This would be the only remedy, rendering the Covenant Agreement unenforceable against the AH Units.
2. Under California law, the City *cannot unilaterally* waive the deed of trust and pursue other remedies such as specific performance of the Covenant Agreement.
3. As the City should have the choice of remedies including specific performance of the Covenant Agreement and the sale of the AH Units, the Deed of Trust should be reconveyed.
4. Developer has recently requested that the City subordinate the Deed of Trust to its new \$80M refinancing. Staff notified Developer that City is not legally required to subordinate either the Covenant Agreement or the Deed of Trust.
5. As noted above, for the City to have the right to seek specific performance of the Covenant Agreement, the Deed of Trust should be reconveyed. Such reconveyance requires the mutual consent by the Developer as the trustor.

#### Staff Recommendation:

Approve the recommended action stated above.

#### Other Available Options:

1. Do not amend the Covenant Agreement, do not reconvey the Deed of Trust and do not subordinate the Deed of Trust. This would frustrate the Project's refinancing.
2. Do not approve the recommended actions and allow the Covenant Agreement and Deed of Trust to remain in effect. This would put the Covenant Agreement's enforceability at risk in the case of a default.

#### Sustainability Impact

No sustainability impact.

Fiscal Impact:

None

City Work Program Item/Description

None

Council Goal

None

California Environmental Quality Act

Not applicable.

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Prepared by: Floy Andrews, Interim City Attorney

Reviewed by: Benjamin Fu, Community Development Director

Approved for Submission by: Tina Kapoor, Interim City Manager

Attachments:

A – First Amendment of Affordable Housing Covenant and Restriction on Sale Price

B – Substitution of Trustee and Full Reconveyance with Trustor Consent